

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YUDITH RAMOS,
Plaintiff,
v.
WORK WORLD AMERICA, INC., et
al.,
Defendants.

No. 2:21-cv-01490-JAM-JDP

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter is before the Court on Work World America, Inc.'s ("Defendant") motion to dismiss. Mot., ECF No. 5. Yudith Ramos ("Plaintiff") filed an opposition. Opp'n, ECF No. 14. Defendant replied. Reply, ECF No. 15. After consideration of the parties' briefing on the motion and relevant legal authority, the Court GRANTS Defendant's Motion to Dismiss.¹

I. BACKGROUND

Defendant employed Plaintiff as a retail salesperson at its Roseville, California store from January 2016 to August 2018. Compl. ¶¶ 13-14, 21, ECF No. 1. Plaintiff and a co-worker,

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for January 25, 2022.

1 Monica Dunievitz ("Dunievitz"),² allege their direct supervisor,
2 Jack Price ("Price"), subjected them to a sexually hostile work
3 environment. Opp'n at 2. Among other things, Price commented on
4 the bodies of young female customers, openly talked about his sex
5 problems and displayed male enhancement pills in the workplace,
6 and viewed pornography from his work computer. Compl. ¶¶ 16-17.

7 On August 20, 2018, Dunievitz placed an anonymous call to
8 Work World headquarters to report that Price had been viewing
9 pornography on a work computer. Id. ¶¶ 19-20. Defendant sent a
10 general manager to investigate, who found that porn sites had
11 been visited but implied Plaintiff had accessed the sites. Id. ¶
12 20. Plaintiff told the investigator it was not her but Price,
13 and that she did not feel safe working with him. Id. ¶¶ 20-21.
14 The investigator did not assure Plaintiff that Work World would
15 take steps to keep her safe, so Plaintiff quit. Id. ¶ 21.

16 On February 14, 2019, Plaintiff filed a charge of
17 discrimination with the Equal Employment Opportunity Commission
18 ("EEOC") against Work World and Price, alleging sexual
19 harassment. Id. ¶ 10. The charge was dual-filed with the
20 California Department of Fair Employment and Housing ("DFEH").
21 Id. In March 2019, the EEOC transferred processing of the charge
22 to DFEH. Id. DFEH's investigation concluded in early August
23 2020. Id. ¶ 11. DFEH issued Plaintiff a right-to-sue notice on
24 August 18, 2020, and EEOC issued a right-to-sue notice on October
25 20, 2020. Id.

26 ² Dunievitz, represented by the same counsel as Plaintiff, brings
27 a nearly identical action against Defendant. See Dunievitz v.
28 Work World America, Inc. et al., No. 2:21-cv-01489-JAM-JDP (E.D.
Cal. 2021).

1 On August 19, 2021, Plaintiff filed the present lawsuit.
2 See generally Compl. Plaintiff asserts five claims: (1) sex
3 discrimination under Title VII; (2) retaliation under Title VII;
4 (3) sexual harassment under California's Fair Employment and
5 Housing Act ("FEHA"); (4) failure to prevent sexual harassment
6 under FEHA; and (5) retaliation under FEHA. Id. Defendant moves
7 to dismiss. See generally Mot.

8 II. OPINION

9 A. Legal Standard

10 Dismissal is appropriate under Rule 12(b)(6) of the Federal
11 Rules of Civil Procedure when a plaintiff's allegations fail "to
12 state a claim upon which relief can be granted." Fed. R. Civ.
13 P. 12(b)(6). "To survive a motion to dismiss a complaint must
14 contain sufficient factual matter, accepted as true, to state a
15 claim for relief that is plausible on its face." Ashcroft v.
16 Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and
17 citation omitted). While "detailed factual allegations" are
18 unnecessary, the complaint must allege more than "[t]hreadbare
19 recitals of the elements of a cause of action, supported by mere
20 conclusory statements." Id. "In sum, for a complaint to
21 survive a motion to dismiss, the non-conclusory 'factual
22 content,' and reasonable inferences from that content, must be
23 plausibly suggestive of a claim entitling the plaintiff to
24 relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir.
25 2009).

26 B. Analysis

27 1. Title VII Claims

28 Plaintiff brings two federal claims: (1) "Discrimination-

1 Sexual Harassment” under Title VII and (2) “Retaliation” under
2 Title VII. Compl. at 6-7. Defendant argues both claims are
3 barred by the statute of limitations because Plaintiff did not
4 file this action within 90 days of receiving her right-to-sue
5 letters. Mot. at 2-5.

6 A plaintiff has 90 days after receipt of a right-to-sue
7 notice from the EEOC within which to commence a civil action
8 based on the charges filed. See 42 U.S.C. § 2000e-5(f)(1).
9 Failure to commence suit within the 90-day period is grounds for
10 dismissal of the action. Missirlian v. Huntington Memorial
11 Hospital, 662 F.2d 546, 549 (9th Cir. 1981); see also Von Saher
12 v. Norton Simon Museum of Art at Pasadena, 592 F. 3d 954, 969
13 (9th Cir. 2010).

14 Here, DFEH issued Plaintiff a right-to-sue notice on August
15 18, 2020, and the EEOC issued a right-to-sue notice on October
16 20, 2020. Compl. ¶ 11. Plaintiff filed the present action on
17 August 19, 2021. Because over 90 days passed before this suit
18 commenced Plaintiff’s Title VII claims are barred. Plaintiff
19 does not dispute this in opposition. See generally Opp’n.
20 Indeed, Plaintiff clearly states in a footnote that she “does not
21 seek to apply equitable tolling to her Title VII claims for which
22 she sought an administrative remedy through EEOC.” Id. at 6,
23 n.3. The Court therefore grants Defendant’s motion to dismiss as
24 to these claims. Finding amendment would be futile, the Court
25 dismisses these claims with prejudice. See Deveraturda v. Globe
26 Aviation Sec. Servs., 454 F.3d 1043, 1049 (9th Cir. 2006).

27 2. Remaining State FEHA Claims

28 Having dismissed Plaintiff’s only federal claims, the Court

declines to exercise supplemental jurisdiction over her remaining state FEHA claims. A district court may sua sponte decline to exercise supplemental jurisdiction over pendant state law claims if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3); see also Acri v. Varian Associates, Inc., 114 F.3d 999, 1001 (9th Cir. 1997) ("in the usual case in which all federal law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims."). The Court agrees with Defendant that here there is no good reason to retain jurisdiction over the FEHA claims. Reply at 4; see also Opp'n at 8, n.4.

III. ORDER

For the reasons set forth above, the Court GRANTS Defendant's motion to dismiss Plaintiff's first and second claims under Title VII WITH PREJUDICE. The Court declines to exercise supplemental jurisdiction over the remaining state law claims.

IT IS SO ORDERED.

Dated: January 28, 2022


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE